No. 10036.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

CYRUS E. AVERILL, JR.,

Appellant,

vs.

FRANCIS F. QUITTNER *et al.*,

Appellees.

BRIEF FOR APPELLANT.

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Opinion Below.

The opinion of the District Judge, set forth at page 28 of the transcript, confirms the order of the Referee denying the bankrupt a discharge, which appears in the transcript at page 11.

Statement of Pleadings and Facts Disclosing Basis of Jurisdiction.

The bankrupt, and appellant herein, Cyrus E. Averill, Jr., filed a voluntary petition in bankruptcy on the 18th day of June, 1940; pursuant to the provisions of the Acts of Bankruptcy an order [Tr. pp. 1-3] was entered on the same day approving the petition and adjudicating the petitioner as a bankrupt. Thereafter, and in the ordinary course of the administration of the bankrupt estate, Floyd C. Balding, as a creditor and Francis F. Quittner as the

Trustee in Bankruptcy of your petitioner, did file specifications of opposition to the discharge of your petitioner [Tr. pp. 4-11]; a hearing upon said objections was duly held before the Honorable Benno M. Brink, as Referee, on the 18th day of April, 1941, and a reporter's transcript of the testimony and proceedings of the same is set forth in the transcript of record [Tr. pp. 63-83]; after said hearing the matter was taken under submission by the Referee and he did thereafter sign a memorandum of decision upon objections to discharge [Tr. pp. 12-20] and did thereafter sign an order denying the discharge of the bankrupt [Tr. p. 11].

The bankrupt herein, within the time permitted by law, did file a petition for review of the Referee's order denying discharge [Tr. pp. 22-25]. Pursuant to said petition the Referee then prepared and filed a certificate on petition for the review from the order denying the discharge [Tr. pp. 25-28]. The review was then duly argued before Honorable Paul J. McCormick, District Judge, on the *29th* day of *September, 1941,* and after the matter was taken under submission the said District Judge did render a decision on the review confirming the order of the Referee, said order of confirmation being made on the 1st day of November, 1941 [Tr. p. 28]. The District Court and the within Circuit Court of Appeals have jurisdiction of said matters involved in this proceeding by virtue of the provisions of the Bankruptcy Act of 1898 and amendments thereto, and particularly Sections 23, 24 and 25 of said Bankruptcy Act. The appeal was taken pursuant to said sections and pursuant to Rules 73, 75 and 76 of the Federal Rules of Civil Procedure.

Statement of the Case and Questions Presented.

(a) Statement of the Case.

On July 21, 1939, Floyd C. Balding, one of the objectors, was awarded a judgment against the bankrupt for approximately thirty-six hundred dollars. On July 25, 1939, four days later, the mortgagee recorded in the office of the county recorder of Los Angeles County a chattel mortgage dated March 15, 1939, and covering the fixtures and equipment of the bankrupt's cafe business. The said chattel mortgage was given to one Glen E. Bodell to secure a certain promissory note executed by the bankrupt in favor of Bodell under date of March 15, 1939. On said July 25, 1939, the same mortgagee also recorded a mortgage dated March 15, 1939, and covering the home occupied by the bankrupt and his wife. This mortgage was likewise given to the said Bodell to secure a note executed in his favor by the bankrupt under date of March 15, 1939. On said July 25, 1939, the said Bodell gave notice of his election to foreclose the chattel mortgage and a few days later became the owner of the assets covered thereby at foreclosure sale. Thereupon he transferred the assets to a corporation known as "Paradise Cafe, Inc.," which he had caused to be formed, and thereafter the business theretofore conducted by the bankrupt was carried on in the name of the corporation with the bankrupt acting as manager, except for a brief period immediately following the transfer to the said corporation.

On January 24, 1940, Balding, who, as we have seen, had been awarded a judgment against the bankrupt on July 21, 1939, commenced an action in the Superior Court of Los Angeles County to set aside the chattel mortgage and also the aforesaid mortgage on the home of the bank-

rupt. Said action went to trial and on June 5, 1940, the trial judge made his decision, in which he held that the two mortgages involved in the action were fraudulent and void as against the said Balding [Tr. pp. 35-61]. However, the formal decree of the Court to this effect was not entered until July 2, 1940; in the meantime, on June 18, 1940, the bankrupt filed the voluntary petition in bankruptcy.

Objections to the discharge of the bankrupt were duly filed [Tr. pp. 4-11; and it is to be noted that the only evidence introduced upon the hearing of said objections consists of the testimony of the bankrupt which is set forth in the reporter's transcript of testimony and proceedings [Tr. pp. 63-83, particularly pp. 72-83] and the stipulated evidence concerning the proceedings in the Superior Court case to set aside the alleged fraudulent chattel mortgage and trust deed consisting of the complaint [Tr. pp. 35-47], the findings of fact and conclusions of law [Tr. pp. 47-58] and the judgment [Tr. pp. 59-62]. No motion was made or granted permitting the introduction of any evidence, such as the testimony of the bankrupt, which might have been given in earlier proceedings, and no other testimony or evidence was presented with reference to this proceeding. However, it becomes obvious by reading the Referee's memorandum of decision, and also the District Judge's order confirming the Referee, that they and each of them took into consideration matters which do not appear of record and were not presented at the hearing on the objections to the discharge.

The findings of facts in the Superior Court and more particularly paragraph IV [Tr. p. 50] and paragraph VII [Tr. p. 52] do specifically find that the bankrupt did, on the 15th day of March, 1939, make, execute and deliver to

the third party, Glen E. Bodell, the documents involved in question in said proceedings; no testimony of any character was introduced which affirmatively or by inference showed any act by the bankrupt herein which had been committed by him after March 15, 1939; and a reading of the findings of fact and conclusions of law and the judgment of the Superior Court indicates, without question, that the judgment herein was predicated upon the acts of the defendant up to the 15th day of March, 1939, and particularly because of his failure to comply with sections such as 3440 and 3442 of the Civil Code of the State of California in failing to publish a notice of intention to chattel mortgage and as is stated in paragraph VIII of the findings [Tr. p. 53], the Court found that even if a substantial sum of money had been advanced by the mortgagee to the bankrupt, nevertheless, failure to comply with Section 3440 would have nullified the attempted transfer.

(b) Questions Presented.

(1) Do any of the specifications relied upon by the Referee and the District Judge, or any portion thereof, state facts sufficient to constitute an objection to the discharge of the bankrupt?

Was there any evidence introduced at the hearing on the objection to the discharge which, under the law applicable,

(2) would sustain a finding that any mortgage or alleged fraudulent transfer was made within twelve months immediately preceding the filing of the petition of bankruptcy in this case; or

(3) Would sustain a finding that the alleged fraudulent transfers were a mere scheme or device on the part of the

bankrupt in this case to conceal his assets with intent to hinder, delay and defraud his creditors at any time within twelve months immediately preceding the filing of the petition in bankruptcy in this case?

Appellant contends that the order of the District Court

Specifications of Error Relied Upon.

confirming the order of the Referee denying the discharge of the appellant as the bankrupt and the order of the Referee denying the discharge of the appellant as the bankrupt were and each of them was erroneous in that:

1. No one of the specifications, relied upon by the Referee and District Judge, of objections to the discharge of your appellant as bankrupt, or any part thereof, contained facts sufficient to state a valid objection, under the Bankruptcy Act, to the discharge of your appellant.

2. No facts were introduced at the hearing on the objections to the discharge, nor was any evidence introduced which could have sustained a finding of facts that your appellant, as bankrupt, had committed any act within the twelve months immediately preceding the filing of the petition of bankruptcy, which act would have justified the denial of the discharge of your appellant as the bankrupt. No evidence was introduced at the hearing on the objection to the discharge which could sustain a finding that there were any acts on the part of the bankrupt within twelve months prior to the filing of the petition of bankruptcy, which acts constituted a fraudulent transfer by the bankrupt of any assets or which facts might justify a conclusion that there was a transfer or concealment by the bank-

rupt of any assets within that period with intent to hinder, delay or defraud the creditors of appellant. From the evidence introduced at the time of the hearing on the objection to the discharge of the bankrupt it affirmatively appeared, through the findings of the Superior Court, which were *res adjudicata* as to the Referee in Bankruptcy, that no act had been committed by the bankrupt since March 15, 1939, and no evidence contrary to the same could be or was introduced to sustain any findings to the effect that the bankrupt concealed his assets at any time within twelve months immediately preceding the filing of the petition in bankruptcy which in this case occurred on June 18, 1940.

Summary of Argument.

Appellant contends that the record of the evidence introduced at the time of the hearing on the objection to discharge of the appellant as bankrupt clearly and unequivocably sustains the position of the bankrupt that he committed no act which might be designated as being objectionable under the Bankruptcy Act, as far as his discharge is concerned, after March 15, 1939, and his petition in bankruptcy was filed on June 18, 1940, more than twelve months after any possible criticizable act committed by the appellant. Not only were the objections not sufficient in form, but they were not meritorious in fact. The discharge of the bankrupt should not be denied because a Referee sees fit to infer facts from evidence not introduced on the hearing of the objections to the discharge of the bankrupt.

ARGUMENT.

I.

None of the Specifications Relied Upon by the Referee and District Judge, or Any Portion Thereof, State Facts Sufficient to Constitute an Objection to the Discharge of the Bankrupt.

For the sake of clarity we examine the seven specifications of objections in chronological order:

(a) The Referee eliminated specifications 1 and 2 in his memorandum of decision upon objections to discharge [Tr. p. 12] by finding as follows:

> "I am entirely satisfied that the first and second objections have not been sustained, . . ."

(b) As to objection No. 3 [Tr. pp. 5-6], the basic allegation therein that on March 15, 1939, the bankrupt caused to be executed and recorded the chattel mortgage in question would eliminate the specification from consideration since it shows on the face thereof that such an act was more than twelve months prior to the commencement of bankruptcy on June 18, 1940. Furthermore, the Referee in his memorandum of decision [Tr. p. 20] points out that there was no violation of Section 29, subdivision b of the Bankruptcy Act, and this is the ground specified as being the offense allegedly committed by the bankrupt under specification 3.

(c) With reference to specification No. 4, the allegation therein refers to the execution and recordation of a mortgage on real property dated March 15, 1939, and the same comments are applicable thereto as are applied to objection

No. 3. In addition thereto, the Referee did not take the transfer with reference to the real property into consideration in denying the discharge to the bankrupt.

(d) An analysis of specification No. 5 indicates that an attempt is made to allege a constructive contempt as to a judgment in the Superior Court not being obeyed by the bankrupt. During the hearing on the objections to the discharge, the Referee commented on this specification as follows [Tr. p. 66]: "The Referee: I know, but that is not a ground of objection."

(e) Specifications No. 6 and No. 7 may be construed jointly in that they both refer to the fact that the personal property covered by the chattel mortgage referred to herein was scheduled in both the schedules of the corporation which succeeded the bankrupt and of your petitioner, the attempt being to allege a violation under Section 29-(b) of the Bankruptcy Act on the ground that a concealment arose from the manner in which the assets were listed in the schedules. As to these two objections, the Referee, in his memorandum of decision, upon objection to discharge, and particularly as set forth in the transcript at page 20, states as follows:

> "However, I cannot agree with counsel for the objectors that there was here a concealment under Section 29 (b) 1 of the Bankruptcy Act by reason of the manner in which the assets here involved were listed in the schedules in this and in the corporation case. . . ."

Neither specification No. 6 nor No. 7, standing by itself, states facts sufficient to sustain an objection to the discharge of your petitioner.

II.

No Evidence Was Introduced at the Hearing on the Objection to the Discharge Which, Under the Law Applicable, Would Sustain a Finding That Any Mortgage or Alleged Fraudulent Transfer Was Made Within Twelve Months Immediately Preceding the Filing of the Petition of Bankruptcy in This Case.

Trusting that the statement will not be considered repetitious, we again point out that the only evidence with reference to the alleged fraudulent transfers, as far as the acts of the bankrupt are concerned, terminate with the 15th day of March, 1939, and the bankruptcy was not filed until June 18, 1940, and this Court as well as the Referee and District Court should be bound on the theory of *res adjudicata* by the findings of the Superior Court as set forth in paragraph IV [Tr. p. 50] and paragraph VII [Tr. p. 52] that it was on the 15th day of March, 1939, that the bankrupt did make, execute and deliver to the third party the documents involved in question in the within proceeding.

(a) No evidence was introduced at the hearing on the objections to the discharge which, under the law applicable, would sustain a finding that any mortgage or alleged fraudulent transfer was made within twelve months immediately preceding the filing of the petition in bankruptcy in this case—since the reporter's transcript is a comparatively short one and the exhibits are set forth in the transcript or record, as heretofore designated, counsel for the appellant believes that it

would be advisable not to attempt to summarize the facts as to the evidence introduced, except to state that no evidence was presented to the Referee from which any conclusions could be drawn that this bankrupt had anything to do with what occurred after March 15, 1939, as far as any transfers by himself were concerned. In other words, if his transfers could be criticized, and the Superior Court did hold them void as to one creditor, nevertheless his acts terminated more than twelve months prior to the commencement of the bankruptcy proceedings.

To sustain the ruling of the Referee would mean that this Court would have to find that Section 14-(c), subdivision 4, of the Bankruptcy Act, relating to the discharge of a bankrupt, had been violated. We turn to the latest authority on these matters, Collier on Bankruptcy, 14th Edition, Vol. 1, commencing at page 1358 thereof, summarizing the requirements of Section 14-(c), subdivision 4:

> "To sustain an objection under Sec. 14c (4), the proof must show (1) that the act complained of was done subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy, (2) with intent to hinder, delay, or defraud creditors, (3) that the act was that of the bankrupt or a duly authorized agent, and (4) that the act consisted of transferring, removing, destroying or concealing any of the bankrupt's property, or permitting any of these acts to be done."

Further, at page 1360, the same author says:

> "In order to justify a refusal of discharge under Sec. 14c (4), it must be shown that the acts complained of were done with an intent to hinder, delay, or defraud his creditors. This intent moreover, must be an actual fraudulent intent as distinguished from constructive intent. . . ."

At page 1362 the same author states as follows:

> "The words 'with intent to hinder, delay, or defraud his creditors,' moreover, mean for the purposes of defrauding the whole body of the bankrupt's creditors and not merely a single creditor. . . ."

And again, at page 1363, Collier states:

> "Violation of the Bulk Sales Act does not in itself establish the requisite intent. . . ."

Not only was the judgment of the Superior Court predicated upon constructive fraud arising from a failure to file a notice of intention to chattel mortgage and failure to record the same within a reasonable time, but the Superior Court expressly withheld any finding that there was no valid consideration, and admitted that probably there had been considerable moneys theretofore advanced by the chattel mortgagee [Tr. p. 53]; in other words, the Superior Court action was entirely based upon constructive fraud and no actual fraud was proven either in the Superior Court or before the Referee in Bankruptcy.

Rutter v. General Motors Acceptance Corp. (C. C. A. 10th, 1934), 70 Fed. (2d) 479, A. B. R. (N. S.) 628, presents an almost identical situation wherein the Circuit Court of Appeals did reverse a denial of the bankrupt's petition for discharge by the Referee, which denial had been sustained by the District Court.

Both the Referee and District Judge, in the instant case, apparently put some weight upon the authority of the case of *In re McKane* (1907), 158 Fed. 647, to sustain a theory that although the chattel mortgage might have been made, executed and delivered more than twelve months prior to the filing of the petition in bankruptcy, that since the date of the recordation of the same was less than twelve months, that then the discharge could be denied. However, this argument overlooks two very potent factors: (1) That it was the chattel mortgagee holder who recorded the chattel mortgage and the trust deed, not the bankrupt, and (2) the fact that later cases after the case of *In re McKane* have held that the *McKane* case is not good law. As a matter of fact, the judgment in the *McKane* case with reference to the effective date of recordation is purely *dictum* because the discharge was actually granted and the Court points out that the objector had failed to prove an intent to defraud, and this same failure of proof exists in the instant case.

The more recent case of *In re Plank* (D. C., Mont., 1923), 289 Fed. 900, 1 A. B. R. (N. S.) 215, upholds the granting of a discharge although a deed executed beyond

the four months was recorded within the four months' period. The opinion rendered in the *Matter of Thompson* (1930), reported in 16 A. B. R. (N. S.) at page 693, carefully examines the authorities with reference to this problem and the attendant problem of continuing concealment, and rather than to unduly lengthen this brief your petitioner respectfully points out that this case contains an excellent analysis of the entire problem and at page 699, *supra,* the Referee says:

> "In addition to the foregoing decisions, which have been considered in detail for the purpose of indicating that the rule of continuing concealment as enunciated by Collier on Bankruptcy is not controlling in this proceeding, there are other and later decisions to the contrary. In Matter of Plank (D. C., Mont.), 1 Am. B. R. (N. S.) 215, 289 F. 900, the court held that a transfer of realty to the bankrupt's wife for a nominal consideration beyond the four months preceding filing the petition was not a fraudulent concealment barring a discharge, although the deed was recorded within the four months' period. Since this decision was rendered the Bankruptcy Act has been amended to extend the time to twelve months, but not otherwise changed."

III.

No Evidence Was Introduced at the Hearing on the Objections to the Discharge Which, Under the Law Applicable, Would Sustain a Finding That the Alleged Fraudulent Transfers Were a Mere Scheme or Device on the Part of the Bankrupt, in This Case, to Conceal His Assets With Intent to Hinder, Delay and Defraud His Creditors, During the Twelve Months Immediately Preceding the Filing of the Petition in Bankruptcy.

It is the contention of appellant that no evidence was introduced other than the act of the bankrupt in making, executing and delivering the chattel mortgage and trust deed above referred to, on March 15, 1939, more than one year prior to bankruptcy. It is, therefore, respectfully submitted that no portion of the transcript of record would sustain a finding that there was a continuing concealment within the twelve months' period in view of the burden of proof required by the law.

In *Remington's* most recent work on bankruptcy, Vol. 7, we find the following discussion at page 497:

> "Sec. 3265. 'Secret Trust' in Bankrupt's Favor as Requisite to Proving Fraudulent Transfer a 'Concealment.'—Generally, in order to prove that the concealment still continues and is being knowingly and fraudulently perpetrated, and sometimes also in order to prove that the property is recoverable for the benefit of the estate and therefore 'belongs' to the estate it is necessary to show that a secret trust exists in the bankrupt's favor."

And further, at page 499, the same author states:

> "And continuing concealment, such as will suffice to bring within the bar of discharge as a concealment

> a transaction originating before bankruptcy, must consist of something more than the mere incidental concealment usually accompanying fraudulent transfers."

An early, yet apparently well written, opinion considered the problem of continued concealment in the case of *In re Crenshaw* (D. C., Ala., 1899), 95 Fed. 632, 2 A. B. R. 623, at page 633, we find a terse summation of the facts and the law applicable thereto, and we quote therefrom:

> ". . . The evidence shows that the transfer by the bankrupt to his wife was made four months and one week before the filing of the petition in bankruptcy, and there is no evidence of any special concealment about it. While this transfer may have been fraudulent and void in law, and by proper proceedings may have been so declared, and the property transferred secured and subjected by the creditors, or by a trustee for their benefit, to the payment of the bankrupt's debts, yet this does not constitute his oath to the statement that he had no assets a false oath. So far as he was concerned, the transfer to his wife was valid and binding, and he could not impeach it. The property was hers as respects everybody but creditors. The transfer might be shown to be null and void as to creditors but by the bankrupt law it is not declared to be so, inasmuch as it was made more than four months before the petition in bankruptcy was filed. The oath must have been false in fact. There must have been an intentional wrong in making it. It must have been willful, and for the purpose of concealment and to mislead and defraud his creditors. In bankrupt's failing to schedule and deliver up the property for the benefit of his creditors will not bar his discharge, even though the transfer to his wife may

have amounted to constructive fraud and have been void as against creditors. *In re Warne,* 10 Fed. 377, *id.* 12 Fed. 431."

For further authority sustaining the position of the bankrupt in the within case we cite *In re Hennebry* (D. C., Iowa, 1913), 207 Fed. 882, 31 A. B. R. 231; *Barrett v. Doody* (C. C. A., Ill. 7th, 1937), 92 Fed. (2d) 633, 35 A. B. R. (N. S.) 165. Cases such as *In re Iskovitz* (D. C., Tex., 1926), 13 Fed. (2d) 473, 8 A. B. R. (N. S.) 431, emphasize the degree of proof necessary to sustain a charge of continuing concealment, and at page 474 of the Federal Reports, *supra,* the Court states as follows:

> "The case of In re Dauchy, 130 F. 532, 65 C. C. A. 78, by the Circuit Court of Appeals for the Second Circuit, through the expression of Circuit Judge Coxe, is in line with other authorities to the effect that a fraudulent concealment, in order to defeat the right to a discharge, must have the element of a secret interest by the bankrupt in the property. It is not sufficient that the property was conveyed in fraud of creditors; it must still, in fact, be the property of the bankrupt's estate."

Once again we respectfully urge that the only fact which is before this Court is that the documents in question were made, executed and delivered by the bankrupt on March 15, 1939, more than twelve months prior to the commencement of the bankruptcy proceedings. If the Referee and District Judge found any facts by inference from which they could draw their conclusion of a continuing concealment, these facts are not present in the transcript of record.

IV.

Conclusion.

Without repeating any of the facts, arguments and authorities heretofore urged in the within brief, should the reviewing Court sustain the ruling of the Referee and District Judge denying the discharge to your petitioner? This same problem was considered in the early case of *In re H. D. Berner* (D. C., Ohio, Referee confirmed by a District Judge, 1900), 4 A. B. R. 383, and the charges centered around the conspiracy of the bankrupt's lawyer in taking an asset for an alleged fee, selling the asset and giving the proceeds thereof to the wife of the bankrupt. After a long analysis of the problem the Court comes to the final conclusion, at page 393, as follows:

> "In the case at bar hardly a scintilla of evidence was produced to show that the store was held in secret trust in any way for the bankrupt's present use or future benefit. Efforts were made to do so, and the specifications were evidently drawn on the theory that such would be the proof.
>
> "Not the slightest proof of acts or words of either the bankrupt or of Mr. Friend, or of anyone connected with either of them, was brought out to indicate the possibility of a secret trust existing. The conveyance was fraudulent, but the bankrupt's connection therewith ceased when he gt the $3,500 of money in his hands and surreptitiously conveyed it to New York and into his sister-in-law's possession.
>
> "Applying the rule heretofore laid down to the case at bar, it follows that the specifications as to concealment of the art store is not sustained by sufficient proof, and therefore fails."

The case of *In re Williams* (D. C., S. C., 1921), 286 Fed. 135, 4 A. B. R. (N. S.) 1106, is one in which a discharge was granted in spite of objections complaining of a transfer of a home by the bankrupt to his wife, the bringing of a state court action to set this transfer aside as fraudulent, the denial of fraud, and the reconveyance of the house by the wife to the bankrupt. At page 142 we find the following language:

> ". . . The proof of fraudulent intent should be clear and beyond the realm of speculation or suspicion. The proof should be convincing and should satisfy the conscience of the court that a positive fraud was intended. When two inferences may be drawn, the one pointing to a guilty or bad intent, and the other consistent with honesty and the absence of fraud and deception, it is the duty of the court to find in favor of honesty and the absence of a fraudulent purpose. *In re Brown* (D. D.), 199 Fed. 356, 29 Am. Bankr. Re. 73."

The Circuit Court of Appeals sustained the granting of a discharge in a case involving a loan from the wife of the bankrupt to the bankrupt and the transfer of real property from the bankrupt to his wife, and, as in the instant case, the strenuous objection that the real property was being held by the wife in secret trust for the bankrupt and that therefore the twelve months' period did not constitute a bar. Your petitioner is constrained to quote from this case as the concluding authority herein, because it so well summarizes the opinion of your petitioner in considering the ruling of the Referee and District Judge and the grounds for review which have been urged by your peti-

tioner. The title of this case is *Stanley's Incorporated Store No. 3 v. Neiderheiser* (C. C. A. 8th, 1930), 45 Fed. (2d) 489, 17 A. B. R. (N. S.) 23. At page 490 we find the following language as to the authority of this Court in reviewing the ruling of the Referee:

> "The report of the referee as to the facts and his conclusions of law is advisory merely, and it is the duty of the court to exercise an independent judgment on the question of discharge."

At page 491 we find the following appropriate language:

> ". . . While the peculiar circumstances of this loan arouse some suspicion, we cannot determine the case upon suspicion. The burden was on appellant to show that in fact title was held in trust by the wife for the husband. The evidence is not sufficient so to show."

At page 492 we quote:

> "Fraud, of course, is not to be presumed. Discharge in bankruptcy is a legal right to be granted by the court, unless it appears that the bankrupt has done some of the things which under the statute (Title 11, U. S. C. A., Sec. 32) are a bar to a discharge."

Wherefore, appellant prays that the order of the Referee and the District Judge denying the discharge be reversed, and an order made and entered granting to appellant his discharge in bankruptcy.

Respectfully submitted,

MARTIN GENDEL,

Attorney for Bankrupt Appellant.